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Follow-up to concluding observations on States parties' reports

Concluding observations on the third periodic report of the Plurinational State of Bolivia

Addendum

Information received from the Plurinational State of Bolivia on the follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Follow-up to paragraph 12 of the concluding observations

The State party should:

(a) Actively investigate human rights violations committed during the period in question so as to identify those responsible, prosecute them and punish them accordingly.

1. Since the adoption of the Constitution of the Plurinational State of Bolivia in 2009, significant progress has been made towards the full recognition of human rights, reflecting the will and commitment of the Plurinational State of Bolivia to implement fully the various international human rights treaties and conventions.

2. On 23 October 2013, an inter-agency cooperation agreement was signed by the Ministry of Justice, the Attorney General's Office, the Forensic Investigation Institute and the Anthropological and Archaeological Research Institute of the University of San Andrés for the coordination of joint activities relating to investigations of cases of enforced disappearance occurring between 4 November 1964 and 10 October 1982 (see annex 1), including field visits, the recovery and identification of remains from likely burial sites and all other related activities.

3. In that context, under the functional leadership of the Public Prosecution Service, joint visits to the town of Teoponte were conducted in 2014, 2015 and 2016 by representatives of the Forensic Investigation Institute, the Anthropological and Archaeological Research Institute and the Ministry of Justice (now the Ministry of Justice and Institutional Transparency), accompanied by relatives of victims of enforced disappearances that had occurred during the administration of Alfredo Ovando Candía (1970). The aim of the visits was to carry out georeferencing and excavations based on information compiled by the Inter-Agency Commission for the Investigation of Enforced Disappearances and the Anthropological and Archaeological Research Institute.

4. On 23 December 2016, Act No. 879 was adopted, establishing a truth commission to investigate cases of murder, enforced disappearance, torture, arbitrary detention and sexual violence — considered to be grave human rights violations, committed with political or ideological motives - – that occurred in Bolivia between 4 November 1964 and 10 October 1982.[1]

5. The Truth Commission is composed of five unpaid members, chosen for their proven impartiality, professionalism, ethical conduct and personal integrity; their commitment to the promotion of human rights; and their knowledge of the situation during the period covered by article 1 of Act No. 879. The members were appointed by the President of the Plurinational State of Bolivia on 21 August 2017. The Commission also has a technical secretariat comprising a technical team that is in charge of the investigation.[2]

6. In addition, the Public Prosecution Service, in accordance with the terms and scope of powers established under Organic Act on the Public Prosecution Service, issued a directive for departmental prosecutors' offices; the Forensic Investigation Institute; the Department of Prosecutorial Management, Monitoring and Evaluation; and the Office of the Prosecutor for Offences against the Person, making it an institutional priority to

[1] In coordination with Association of Relatives of Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD), Ministry of Justice, Office of the Deputy Minister of Foreign Affairs, Office of the Deputy Minister of Defence and Cooperation for Comprehensive Development, Office of the Deputy Minister of the Interior and the Police, Public Prosecution Service, Forensic Investigation Institute, Supreme Court of Justice, Bolivian police force, Human Rights Commission of the Chamber of Deputies, Anthropological and Archaeological Research Institute of the University of San Andrés, as well as ASOFAMD, Fundación Solón, Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo, Asamblea Permanente de Derechos Humanos de La Paz, and Comunidad de Derechos Humanos, with the technical support of the Bolivia country office of the Office of the United Nations High Commissioner for Human Rights.

[2] Supreme Decree No. 3314, of 6 September 2017, establishing the directorate that serves as the technical secretariat of the Truth Commission.

investigate criminal acts involving human rights violations committed during the unconstitutional regimes between 1964 and 1982, including enforced disappearance, murder or any other related offence.[3]

(b) Ensure that the Armed Forces cooperate fully in the investigations and promptly hand over all the information at their disposal.

7. Pursuant to the Constitution, the organization of the State is based on the independence, separation, coordination and cooperation of the legislative, executive, judicial and electoral branches of government.[4] Under that framework, the Organic Act on the Public Prosecution Service provides that, in order to ensure the fulfilment of its mandate, the Public Prosecution Service will act in coordination with the legislative, executive, judicial and electoral branches, the Plurinational Constitutional Court, the Ombudsman's Office and other State institutions and departments. For that reason, the armed forces have been cooperating in the investigations, as provided for in the Constitution and the legislation in force.

8. As was stated in the follow-up report on paragraphs 12, 13 and 14 of the concluding observations on the third periodic report of the Plurinational State of Bolivia regarding the implementation of the International Covenant on Civil and Political Rights (CCPR/C/BOL/CO/3/Add.1, para. 4), on 19 May 2009 the Ministry of Defence issued Ministerial Resolution No. 0316, pursuant to which, and in response to a motion from the Appeals Prosecutor, the Supreme Court decisions issued by the First Criminal Chamber of the then Supreme Court of Justice and the rulings of the Eighth Investigating Judge of the La Paz Criminal Court, in February 2010, members of the armed forces had access to documentation dating back to 1980 and to classified documents that were in the custody of the armed forces.[5]

(c) Revise the standards of proof in relation to acts for which reparation is sought so that the burden of proof borne by victims is not an insurmountable obstacle; establish a mechanism for appeal and review of applications; and make available the resources needed to ensure that victims will receive the full amount of compensation awarded to them.

9. The acts for which individuals are entitled to reparation in connection with political violence occurring during the period stipulated in Act No. 2640 are:[6]

(a) Arbitrary arrest or detention;

(b) Torture;

(c) Exile or banishment;

(d) Qualifying injury or disability;

(e) Death, at home or abroad, from causes related to political violence;

(f) Enforced disappearance;

(g) Persecution for political or trade-union-related reasons.

10. In accordance with the mandate established in Supreme Decree No. 29214,[7] the now defunct National Commission on Reparation for Victims of Political Violence approved and published the Minimum Requirements for the Classification of Acts Eligible for Reparation (which set out documentation requirements for claimants), which were officially disseminated in a national newspaper.[8] (See annex 2).

[3] Directive FGE/RJGP No. 141/2017, issued by the Attorney-General's Office.

[4] Current Constitution, art. 12.

[5] Ministerial Resolution MD-SD-DGAJ-UGM No. 3619, of 13 October 2016, of the Ministry of Defence.

[6] Act No. 2640 of 11 March 2004, art. 4.

[7] Supreme Decree No. 29214 of August 2007.

[8] Published on 12 August 2007 in the *La Razón* newspaper.

11. The minimum requirements regarding the submission of birth certificates and witness statements were relaxed (annex 3),[9] and the manual for classifying acts eligible for reparation was approved (annex 4).[10]

12. With regard to requests for reconsideration, the manual on the criteria for classifying detention, exile, and qualifying injury and disability in connection with requests for reconsideration was approved in 2009, giving continuity to the guidelines set out by the now defunct National Commission on Reparation for Victims of Political Violence.[11]

13. The above-mentioned manuals thus relaxed the minimum standard of proof with regard to the determination of eligibility in order to make it easier for victims of political violence to meet them.

14. It should be borne in mind that applications have been rejected not only because supporting documents were not submitted but also for the following legal reasons:

- The minimum standard of proof adopted by the now defunct National Commission on Reparation for Victims of Political Violence (as set out above) was not met;
- The exceptions set out in article 10 of Act No. 2640 were found to apply;
- The applications were submitted after the deadline;
- The political violence occurred under a constitutional government and not under an unconstitutional government during the military dictatorship.

15. With regard to second requests for reconsideration, the grounds for inadmissibility were as follows:

- Failure to submit new evidence in accordance with the minimum mandatory requirements for evidence, legitimacy and identity;
- Failure to submit requests for reconsideration within the deadline;
- An exception under article 10 of Act No. 2640 was found to apply;
- The act was found to occur under a constitutional government and not under an unconstitutional government during the military dictatorship.

16. In order to ensure the availability of the resources needed to ensure that victims received the full amount of compensation awarded to them:

1. Fulfilment of the 20 per cent obligation

17. Once the victims of political violence had been identified (resulting in 1,714 eligible beneficiaries), and Act No. 238 of 30 April 2012 had been promulgated, the State Treasury was authorized to make a single final payment, amounting to $3.6 million, equivalent to 20 per cent of the total amount of special compensation for victims of political violence that the State had committed to pay in accordance with article 16 of Act No. 2640.

18. Hence, the Plurinational State of Bolivia has complied with the commitment, enshrined in Act No. 2640, to pay 20 per cent of the compensation awarded to victims of political violence.

2. The remaining 80 per cent

19. With regard to the obligation of the executive branch to process donations from the private sector, foreign sources and international organizations in order to cover the remaining 80 per cent of the total amount of approved compensation,[12] the Ministry of Justice (now the Ministry of Justice and Institutional Transparency) carried out a number of activities with a view to obtaining international cooperation resources from various international entities that provide external financing (the Inter-American Development

[9] Minutes of the Ordinary Meeting of 1 November 2007.
[10] Administrative Decision No. 04/2007 of 8 November 2007.
[11] Commission Resolution No. 02/09 of 10 October 2009.
[12] Article 16 (b) of Act No. 2640.

Bank, the European Union, the United States Agency for International Development, the Embassy of Canada, the Embassy of Spain, the Bolivarian Republic of Venezuela, the United Nations and the World Bank). These entities indicated that they were unable to contribute any funds for the compensation of victims of political violence, as they provide technical and financial support for other types of projects.

(d) Guarantee the effective enjoyment of the right to full redress, including psychosocial care and counselling and the honouring of historical memory, as established in Act No. 2640. Particular attention should be paid to gender considerations and victims in vulnerable situations.

1. Health Care

20. Act No. 2640 provides for free medical care, emergency care, surgical care and psychological care for victims of political violence ***who have no health insurance***.[13]

21. The now defunct National Commission on Reparation for Victims of Political Violence has approved the manual for classifying acts eligible for reparation.[14] Where reparation measures involving the provision of health care are concerned, the manual establishes that victims of political violence occurring under unconstitutional governments shall be entitled to free health care including emergency care, surgical care, mental health care, necessary physical and psychological rehabilitation, and medications. The only beneficiaries of social health benefits are direct victims of political violence who have explicitly requested this benefit. These benefits are not available to persons eligible for short-term social security or insurance for the elderly.

22. There is no record of any requests for this health insurance in the files of the now defunct National Commission on Reparation for Victims of Political Violence. Furthermore, as indicated in the manual, elderly persons who have social insurance coverage or insurance for the elderly have all been excluded from this benefit, which tacitly demonstrates that all benefiting applicants are eligible for one of the other insurance schemes. Social security for older persons, which includes outpatient care, supplementary diagnostic services, dentistry services, hospitalization, medical and surgical treatment, and the provision of necessary supplies, medication and traditional natural products, appropriate to each level of care, was established under Act No. 3323 of 16 January 2006. This insurance therefore covered all victims of political violence.

2. Conferral of Honours

23. In May 2017, on the occasion of the International Week of Disappeared Detainees, the Chamber of Deputies paid tribute[15] to victims of enforced disappearance during the dictatorships by supporting the establishment of the Truth Commission and the declassification of files that may make it possible to uncover the truth and identify the locations of disappeared martyrs and heroes.

Follow-up on paragraph 13

The State party should amend the current rules of military criminal law to exclude human rights violations from military jurisdiction. It should also amend the Criminal Code to include a definition of torture that is fully in line with articles 1 and 4 of the Convention against Torture and with article 7 of the Covenant. The State party should ensure that all alleged acts of torture or ill-treatment are promptly investigated, that the perpetrators are prosecuted and punished in a manner commensurate with the seriousness of the offence and that the victims obtain appropriate redress and protection. The State should expedite its adoption of the

[13] Article 6 of Act No. 2640.

[14] Administrative Decision No. 04/2007 of 8 November 2007.

[15] Chamber Tribute No. 018/2017-2018 of the Chamber of Deputies, Plurinational Legislative Assembly.

measures required to establish a national mechanism for the prevention of torture and ensure that it is provided with sufficient resources to enable it to operate efficiently.

24. With regard to the recommendation that the State party should amend the current rules of military criminal law to exclude human rights violations from military jurisdiction, the actions of the high command of the armed forces and the general commands of the armed forces are strictly governed by the Constitution and the international laws, treaties and conventions, ratified by the Plurinational Legislative Assembly, which recognize that human rights take precedence over domestic legislation. Ordinary crimes are tried before the ordinary courts, while military crimes are tried before the Supreme Court of Military Justice, which is the body specializing in the administration of military justice under article 180 (III) of the Constitution. The legal parameters applied by the military courts are established under the Military Criminal Code, the Code of Military Procedure and the Military Justice Organization Act. Accordingly, military personnel who violate regulations or commit offences that are not within the jurisdiction of the military courts (primarily crimes against the life and physical integrity of persons) are prosecuted and tried by the ordinary courts.

25. In order to adapt domestic legislation to the current Constitution and to international human rights treaties and conventions, the Plurinational State of Bolivia has been working on a proposal to amend the Organic Act on the Armed Forces of the Plurinational State.

26. With regard to the recommendation to amend the Criminal Code to include a definition of torture that is fully in line with articles 1 and 4 of the Convention against Torture and article 7 of the Covenant, the recommendation to ensure that all alleged acts of torture or ill-treatment are promptly investigated and the recommendation to ensure that the perpetrators are prosecuted and punished in a manner commensurate with the seriousness of the offence and that the victims obtain appropriate redress and protection, the Plurinational State of Bolivia has been making efforts to amend the Criminal Code in order to include the definition of torture set out in articles 1 and 4 of the Convention against Torture.

27. With regard to the recommendation to expedite the adoption of the measures required to establish a national mechanism for the prevention of torture and ensure that it is provided with sufficient resources to enable it to operate efficiently, **as the Committee is aware, under Act No. 474 of 30 December 2013, the Plurinational State of Bolivia established the Service for the Prevention of Torture, thereby demonstrating the State's firm commitment to comply with the international obligation that it assumed on ratifying the Optional Protocol to the Convention against Torture**.

28. The Service for the Prevention of Torture is a decentralized public institution under the Ministry of Justice that serves as a mechanism for the prevention of torture and other cruel, inhuman, degrading or humiliating treatment or punishment, in accordance with the Optional Protocol.

29. Supreme Decree No. 28631 of 8 March 2006 provides that decentralized public institutions have the following characteristics:[16]

(1) They have their own assets;

(2) They are legal persons under public law;

(3) They have independent control of their administrative, financial, legal and technical activities;

(4) They are headed by a chief executive officer, appointed by supreme resolution, who represents the institution and is its highest executive authority; he or she defines the matters that fall within the institution's jurisdiction through administrative decisions and other measures.

[16] Article 32 of Supreme Decree No. 28631, implementing Act No. 3351 of 21 February 2006 on the Organization of the Executive Branch.

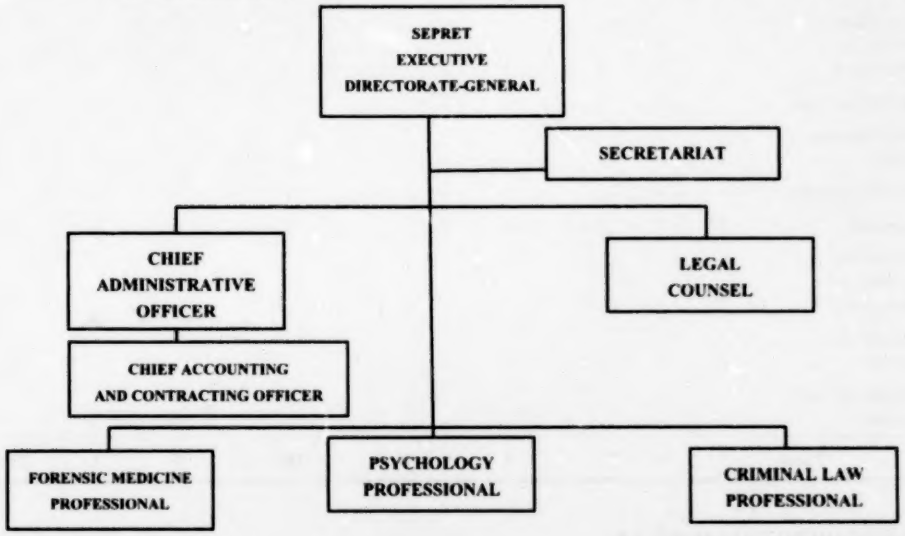
30. The establishment of the Service for the Prevention of Torture as a decentralized institution took into account the scope of article 17 of the Optional Protocol and article 32 of Supreme Decree No. 28631.

31. Furthermore, Supreme Decree No. 28631 provides that decentralized public institutions shall define their structures in accordance with their organizational objectives and terms of reference. Such institutions may also have a legal counsel and a chief administrative officer, who report directly to the highest executive authority.

32. Article 29 of the Supreme Decree sets out the following classification of public institutions and enterprises that make up the executive body:

- Deconcentrated public institutions;
- Decentralized public institutions;
- Autonomous public institutions;
- Public enterprises;
- Semi-public companies.

33. Under Bolivian law, the Service for the Prevention of Torture has the status of a decentralized public institution with administrative, financial, legal and technical autonomy. It is structured as follows:



34. Within the framework of Act No. 474 and articles 11 and 12 of Supreme Decree No. 2082 of 21 August 2014, the Acting Executive Director of the Service for the Prevention of Torture was appointed by Supreme Resolution No. 15925 of 26 August 2015.[17]

35. With regard to the Committee's concern as to whether the Service for the Prevention of Torture constitutes an independent mechanism responsible for receiving and investigating allegations of torture, it should be noted that, under Supreme Decree No. 2082, the Service has the authority to submit reports and documents to the competent authority with a view to ensuring the investigation and punishment of acts involving torture and other cruel, inhuman or degrading treatment or punishment. It also has the authority to file, on its own initiative, complaints relating to torture and other cruel, inhuman or degrading treatment or punishment and to follow up on investigations and prosecutions of torture and other cruel, inhuman or degrading treatment or punishment.

[17] Dr. Roberto Álvaro Guzmán Durán, Acting Executive Director of the Service for the Prevention of Torture.

36. Article 9 of Supreme Decree No. 2082 provides that one of the Service's functions is to file, on its own initiative, complaints relating to torture and other cruel, inhuman or degrading treatment or punishment.

37. From 1 July 2016 to 8 August 2017, the Service handled the following cases involving possible victims of torture and other cruel, inhuman or degrading treatment or punishment.

Pando	*La Paz*	*Beni*	*Santa Cruz*	*Tarija*	*Potosí*	*Chuquisaca*	*Cochabamba*	*Oruro*	*Total*
2	19	9	2	2	-	2	3	3	42

The Service conducted unplanned visits to the following facilities between 1 July 2016 and 8 August 2017:

Facility	*Pando*	*La Paz*	*Beni*	*Santa Cruz*	*Tarija*	*Potosí*	*Chuquisaca*	*Cochabamba*	*Oruro*	*Total*
Custodial facilities	3	14	4	1	2	-	3	1	1	29
Prisons for adults	1	5	7	2	4	2	3	4	-	28
Special facilities	-	-	-	-	-	-	2	-	-	2
Specialized centres for adolescents	1	1	2	1	1	1	-	-	-	7
Military prisons	-	1	-	-	-	-	-	-	-	1
Police training centres	-	-	1	-	-	-	-	-	-	1
Military barracks	-	4	1	-	-	-	1	-	-	6
Hospitals	2	8	6	1	2	1	1	-	-	21
Shelters for children and adolescents	1	2	-	-	-	1	-	-	-	4
Shelters for women	-	1	-	-	-	-	-	-	-	1
Shelters for older persons	1	-	-	-	-	-	-	-	-	1
Total	**9**	**36**	**21**	**5**	**9**	**5**	**10**	**5**	**1**	**101**

Follow-up on paragraph 14

The State party should speed up the proceedings relating to the incidents of racial violence that occurred in Pando and in Sucre in 2008 in order to put an end to the prevailing situation of impunity. The State should also award full redress to all the victims, including appropriate medical and psychosocial treatment for the injury suffered.

38. With regard to the violent events in Pando, in accordance with article 116 (II) of the Constitution, the constitutional principle of due process and respect for constitutional rights and guarantees, Trial Court No. 6 of La Paz issued judgment No. 10/2017 on 10 March 2017, ruling as follows:[18]

- That the accused, Leopoldo Fernández Ferreira, had indirect criminal responsibility for the offence of homicide, provided for and punished under articles 251 read

[18] Trial Court No. 6 of La Paz: criminal proceedings brought by the Public Prosecution Service and a civil lawsuit against the former Prefect of Pando, Leopoldo Fernández Ferreira; the Mayor and councillors of Porvenir, Pando; employees of the Departmental Highway Service, Pando; and other persons.

together with article 20 of the Bolivian Criminal Code, and was sentenced to 15 years' imprisonment, to be served in San Pedro Prison in La Paz;

- That Juan Marcelo Mejido Flores committed the offence of causing serious and minor bodily harm, provided for and punished under article 271, first part, of the Criminal Code, and was sentenced to 5 years' imprisonment, to be served in San Pedro Prison in La Paz;
- That Evin Ventura Voght was an accessory to the offence of homicide under article 251 read together with article 23 of the Bolivian Criminal Code, and was sentenced to 9 years' imprisonment, to be served in San Pedro Prison in La Paz;
- That Herman Justiniano Negrete was an accessory to the offence of homicide under article 251 read together with article 23 of the Bolivian Criminal Code, and was sentenced to 8 years' imprisonment, to be served in San Pedro Prison in La Paz.

39. The parties to the proceedings (the accusers and the accused) filed restricted appeals in respect of which the Departmental Court of Justice of La Paz has not yet issued a judgment. A decision concerning redress for the damages suffered by the victims in the Porvenir case will be taken once a final judgment has been issued.

40. With regard to the violent events that took place in Sucre in 2008,[19] the trial court of Padilla, as part of the criminal proceedings referred to as the *24 de mayo case*, handed down a sentence of 2 years' imprisonment to the defendants José Hugo Paniagua and Arancibia Antonio Aguilar Saavedra, but granted them a judicial pardon in accordance with article 368 of the Code of Criminal Procedure. Sentences were handed down to the defendants Jaime Barrón Poveda, Jhon Clive Cava Chávez, Savina Cuéllar Leaños, Luis Fidel Herrera Ressini, Aydee Nava Andrade, Epifania Terrazas Mostacedo, Jamill Pillco Calvimontes, Juan Antonio Jesús Mendoza, Franz Quispe Fernández and Ivan Álvaro Ríos Escalier for the offences of grievous bodily harm, aggravated coercion, abuse, torture, criminal association and possession of explosives and asphyxiating substances.

41. The case is currently pending before the Supreme Court, following the submission of an application for judicial review. As a final judgment has not yet been handed down, the proceedings established under the Code of Criminal Procedure to redress the damages suffered by the victims have not been initiated.

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[19] The trial court of the city of Padilla: the *24 de Mayo* case, brought by the Public Prosecutor's Office and by victims filing civil lawsuits against Jaime Barrón Poveda, Jhon Clive Cava Chávez, Savina Cuellar Leaños, Luis Fidel Herrera Ressini, Aydee Nava Andrade, Epifania Terrazas Mostacedo, Jamill Pillco Calvimontes, Juan Antonio Jesús Mendoza, Franz Quispe Fernández, Iván Álvaro Ríos Escalier for offences including criminal association, sedition and torture.